

Nov 07, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PREPARED FOOD PHOTOS, INC.,
f/k/a ADLIFE MARKETING &
COMMUNICATIONS CO., INC., a
Florida for-profit corporation,

Plaintiff,

v.

POOL WORLD, INC., a Washington
for-profit corporation,

Defendants.

CASE NO: 2:23-CV-0160-TOR

AMENDED JURY TRIAL
SCHEDULING ORDER

By Order of the Court, the original Jury Trial Scheduling Order was suspended. ECF No. 36. This case did not settle, so it is necessary to enter an amended jury trial scheduling order. The unexpired deadlines are amended as follows:

* * *

4. Rule 26(a)(2) Expert Identification and Reports

The parties are cautioned that failure to timely identify experts or provide reports in accordance with Rule 26 and this scheduling order may result in

1 exclusion of such testimony absent good reason. *See Wong v. Regents of the Univ.*
2 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005).

3 **A. Plaintiff - Initial Expert Disclosures**

4 Each Plaintiff shall identify its experts and serve those experts' Rule
5 26(a)(2) reports on all other parties no later than **December 2, 2024**. Each Plaintiff
6 shall also provide dates for which those experts can be available for deposition.

7 **B. Defendant - Initial Expert Disclosure**

8 Each Defendant shall identify its experts and serve those experts' Rule
9 26(a)(2) reports on all other parties no later than **January 31, 2025**. Each
10 Defendant shall also provide dates for which those experts can be available for
11 deposition.

12 **C. Plaintiff - Rebuttal Expert Disclosure**

13 Each Plaintiff shall identify its rebuttal experts and serve those experts' Rule
14 26(a)(2) reports on all other parties no later than **February 17, 2025**. Each
15 Plaintiff shall also provide dates for which those experts can be available for
16 deposition.

17 **5. Discovery Cutoff**

18 **A. Generally**

19 All discovery, including depositions and perpetuation depositions, shall be
20 completed by **June 10, 2025** ("Discovery Cutoff"). To be timely, discovery

1 requests must be served sufficiently in advance of the deadline to allow for timely
2 response by the cutoff date. The parties shall not file discovery, except those
3 portions necessary to support motions or objections.

4 **B. Depositions, Interrogatories, Requests for**
5 **Production/Admission**

6 Unless otherwise stipulated, no more than 12 depositions up to seven hours
7 long, may be taken by the plaintiffs, or by the defendants, or by third-party
8 defendants. Fed. R. Civ. P. 30(a)(2)(A) and (d)(1) (**modified**).

9 Unless otherwise stipulated, any one party may serve no more than 25 written
10 interrogatories, including discrete subparts, on any other party. Fed. R. Civ. P.
11 33(a)(1) and advisory committee notes (1993) explaining “discrete subparts”.

12 Unless otherwise stipulated, any one party may serve no more than 30
13 requests for production, including discrete subparts, on any other party. LCivR
14 34(d).

15 Unless otherwise stipulated, any one party may serve no more than 30
16 requests for admission, including discrete subparts, on any other party. LCivR
17 36(c) (**modified**).

18 A party needing relief from these limitations should timely seek relief from
19 the Court by motion.
20

1 **C. Protective Orders**

2 Any stipulation or motion for a confidentiality agreement or protective order
3 must be timely filed so as not to delay the discovery process or the Court’s
4 deadlines. If confidential records are attached to court filings, “compelling
5 reasons” must be shown to seal records attached to a dispositive motion and “good
6 cause” must be shown to seal records attached to a non-dispositive motion.
7 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.
8 2006).

9 **D. Motions to Compel**

10 To avoid wasted time and expense, the parties may contact chambers to
11 schedule a telephonic conference to obtain an expedited ruling on discovery
12 disputes. Motions to compel seeking sanctions shall be filed in writing.

13 **6. Dispositive and *Daubert* Motions**

14 All dispositive and *Daubert* motions shall be filed on or before **June 17,**
15 **2025.** Responses and replies to dispositive and *Daubert* motions shall comply with
16 LCivR 7. No supplemental responses or supplemental replies to any dispositive or
17 *Daubert* motion may be filed without Court permission.

18 Dispositive and *Daubert* motions shall be noted for hearing at least **fifty (50)**
19 **days** after the date of filing.

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7. Motion Practice

A. Notice of Hearing

Parties are to comply with LCivR 7(i) when noting motions for hearing. If oral argument is sought by a party, counsel shall first confer and determine an agreeable hearing date and time, and then contact chambers to confirm the Court's availability for the agreed upon hearing date and time. All non-dispositive motion hearings shall be conducted telephonically, unless in-person argument is approved by the Court. The parties may use cellular phones for telephonic hearings provided the caller is in an area with adequate cellular service and minimal background noise. Neither cell phones nor landline phones may be used in speaker mode or with a headset. All phones must be muted unless addressing the Court. At the Court's discretion, dispositive motion hearings in which oral argument has been requested may be set for either in-person or telephonic appearance.

B. Motions to Expedite

If there is a need to have a motion heard on an expedited basis, the party must file a motion to expedite and an accompanying memorandum (or declaration) establishing the need for an expedited hearing. The motion shall be noted for hearing, without oral argument, no earlier than seven (7) days after the filing of the motion, or two (2) days after the date of filing with prior permission from the Court. Pursuant to local rule, motions (including stipulated motions) may **not** be

1 noted for hearing for the same they are filed.

2 **C. Citing Previously-Filed Documents**

3 All references to a previously filed document shall cite to the electronic case
4 filing (ECF) record number and page number within that ECF record, in the
5 following format, “ECF No. __ at __.” Such documents shall not be attached as
6 exhibits.

7 **D. Reliance on Deposition Testimony**

8 When a party relies on deposition testimony to support a position it takes in
9 support or opposition to an issue, that party shall provide the Court with the
10 pertinent excerpts of the deposition testimony relied upon and shall cite to page
11 and line numbers of the deposition it believes supports its position. *See generally*
12 *LCivR 56(c)*. Submission of the entire deposition and/or failure to cite to specific
13 portions of the deposition may result in the submission being stricken from the
14 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

15 **E. Supplemental Responses or Replies**

16 No supplemental responses or supplemental replies to any motion may be
17 filed unless the Court grants a motion to file such documents.

18 **F. Motions to Reconsider**

19 Motions to reconsider are disfavored. Motions must show manifest error in
20 the prior ruling or reveal new facts or legal authority which could not have been

1 brought to the Court's attention earlier. The motion shall be noted for expedited
2 hearing without oral argument seven days after it is filed. No response to a motion
3 for reconsideration need be filed unless requested by the Court. No motion for
4 reconsideration will be granted without such a request by the Court.

5 **G. Decisions on Motions**

6 The parties may call to inquire about the status of a decision on a motion if
7 the Court has not issued an order within **thirty (30) days after** the hearing on said
8 motion.

9 **8. Witness/Exhibit Lists**

10 Witness/Exhibit lists shall be filed and served and exhibits made available for
11 inspection or copies provided to the parties on or before **August 26, 2025**.

12 **A. Witness Lists**

13 Witness lists shall include a brief description of the witness, a brief summary
14 of the witness' anticipated testimony, whether the witness will be called as an
15 expert, and any known trial date/time conflicts the witness may have.

16 **B. Exhibit Lists**

17 Exhibit lists shall include a brief description of the exhibit. All exhibits shall
18 be pre-marked; Plaintiffs' exhibits shall be numbered 1-499; Defendants' exhibits
19 shall be numbered 500-999. Exhibits shall be marked in the lower right corner of
20 the exhibit when practicable.

1 **C. Objections**

2 Objections to witnesses/exhibits shall be filed and served on or before
3 **September 2, 2025**, AND SHALL BE HEARD AT THE PRETRIAL
4 CONFERENCE. All objections to witnesses shall set forth a legal basis and
5 explanation for the objection. Objections to an exhibit or portion thereof, shall be
6 accompanied by a full and complete copy of the exhibit in question and a short
7 legal explanation for the objection. The party seeking the admission of the witness
8 or exhibit has five (5) days, excluding federal holidays and weekends, to file a
9 response to the opposing party's objection; no reply shall be filed.

10 **9. Deposition Designations**

11 **A. Generally**

12 Designation of substantive, as opposed to impeachment, deposition or prior
13 testimony to be used at trial shall be highlighted in yellow by Plaintiff or in blue by
14 Defendant in a complete transcript of the deposition or prior testimony and served
15 but not filed on or before **August 26, 2025**.

16 **B. Cross-Designations**

17 Cross-designations shall be highlighted in yellow by Plaintiff or in blue by
18 Defendant in the transcript containing the opposing party's initial designations and
19 shall be served but not filed on or before **September 2, 2025**.

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C. Objections

All objections to designated deposition or prior testimony and the legal bases for the objections, shall be filed and served on or before **September 9, 2025**. Any designated deposition or prior testimony objected to shall be underlined in black in a complete yellow/blue highlighted copy of the deposition/prior testimony transcript described above. A paper copy of the underlined document shall be filed and served with the objections. The party seeking admission of the testimony has five (5) days, excluding federal holidays and weekends, to file a response; no reply shall be filed. If the deposition was videotaped, and the videotape is to be used at trial, the party seeking to use the videotaped deposition shall indicate the relevant portion on both the written transcript and the videotape. Similarly, objections shall be made on the written transcript as explained above along with the applicable time stamp on the video tape noted. All objections to deposition and prior testimony designations shall be heard and resolved at the pretrial conference with the videotape available for display.

10. Motions in Limine

All unresolved substantive or evidentiary issues that may foreseeably arise during trial shall be addressed by motions in limine to be filed and served on or before **August 5, 2025**. Such motions will be addressed and resolved at the pretrial conference. However, motions in limine may not reargue issues already

1 decided by the Court.

2 **11. Pretrial Order**

3 **A. Generally**

4 A joint proposed pretrial order prepared in accordance with LCivR 16(e) shall
5 be filed on or before **September 22, 2025**, and a copy e-mailed, in Microsoft Word
6 format, to “riceorders@waed.uscourts.gov”.

7 **B. Exhibit List**

8 The list of exhibits contained in the Joint Proposed Pretrial Order shall reflect
9 the exhibit marking scheme described above. In preparing the Joint Proposed
10 Pretrial Order, the parties shall confer regarding duplicative exhibits and determine
11 which party will submit such exhibits for trial.

12 **12. Trial Briefs, *Voir Dire*, and Jury Instructions**

13 **A. Generally**

14 Trial briefs, requested *voir dire*, and jointly proposed jury instructions shall be
15 filed and served on or before **September 22, 2025**.

16 **B. Trial Brief Length**

17 Trial briefs shall not exceed twenty (20) pages without prior court approval.
18 To obtain court approval, a party must file a motion to file an overlength brief,
19 demonstrating good cause why supplemental briefing is necessary.

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1 **C. Jury Instructions**

2 The parties' jointly proposed jury instructions shall include a table of
3 contents, preliminary instructions, final substantive instructions, and a verdict
4 form. The instructions shall be sequentially numbered and include a citation of
5 authority for each. The instructions shall, at a minimum, include instructions
6 regarding the elements of each claim or defense, the relief sought, and otherwise
7 comply with LCivR 51(a). A party proposing a Jury Instruction that differs from a
8 Ninth Circuit Model Civil Jury Instruction should submit a memorandum
9 analyzing cases to support the modification.

10 **D. Individually Proposed Jury Instructions**

11 If the parties are unable to agree on certain instructions, they are to submit
12 individually proposed jury instructions no later than the date the jointly proposed
13 instructions are due. All individually submitted proposed jury instructions must
14 adhere to the format described above and not repeat the jointly proposed
15 instructions.

16 **E. Objections**

17 Any objections to the opposing party's individually submitted proposed
18 instructions must be filed no later than five (5) days, excluding federal holidays
19 and weekends, after the individual proposed instructions were filed. All objections
20 shall set forth the basis for the objection and briefly explain why the instruction in

1 question should not be used or should be altered.

2 **F. Courtesy Copies**

3 Counsel are instructed to e-mail courtesy copies of their **jointly** and
4 **individually** proposed jury instructions, in Microsoft Word format, to
5 “riceorders@waed.uscourts.gov”.

6 **13. Pretrial Conference**

7 An in-person pretrial conference will be held on **October 8, 2025, at 11:00**
8 **a.m.**, in Spokane Courtroom 902. All counsel trying the case must be present at the
9 pretrial conference.

10 **14. Trial**

11 The jury trial shall commence on **October 14, 2025, at 8:30 a.m.**, in Spokane
12 Courtroom 902. Counsel shall appear at 8:30 a.m. on the first day of trial to
13 address any pending pretrial matters. Jury selection will begin promptly at 9:00
14 a.m.

15 IT IS SO ORDERED. The District Court Clerk is directed to enter this
16 Order and provide copies to the parties.

17 DATED November 7, 2024.



Thomas O. Rice
THOMAS O. RICE
United States District Judge